



DIAMOND MCCARTHY LLP
Andrew B. Ryan, Esq. (*pro hac vice*)
1201 Elm Street, Suite 3400
Dallas, TX 75270
Telephone: 214-389-5300
Facsimile: 214-389-5399
aryan@diamondmccarthy.com
Counsel for Allan B. Diamond,
Chapter 11 Trustee for Howrey LLP

Signed and Filed: June 27, 2014

A handwritten signature in dark ink, appearing to read "Dennis Montali".

DENNIS MONTALI
U.S. Bankruptcy Judge

KORNFELD, NYBERG, BENDES & KUHNER, P.C.
Eric A. Nyberg, Esq. (Bar No. 131105)
Chris D. Kuhner, Esq. (Bar No. 173291)
1970 Broadway, Suite 225
Oakland, CA 94612
Telephone: 510-763-1000
Facsimile: 510-273-8669
Local Counsel for Allan B. Diamond,
Chapter 11 Trustee for Howrey LLP

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re

HOWREY LLP,

Debtor.

Case No. 11-31376 DM

Chapter 11

**ORDER GRANTING JOINT MOTION TO
APPROVE A SETTLEMENT WITH THE
FORMER HOWREY PARTNERS
REPRESENTED BY KTBS AND DENYING
ORAL MOTION FOR STAY**

On June 24, 2014, the *Joint Motion to Approve a Settlement with the Former Howrey Partners Represented by KTBS* (“Joint Motion”) filed by Allan B. Diamond, chapter 11 trustee (“Trustee”) of the estate of Howrey LLP (“Howrey” or “Estate”) and the Official Committee of Unsecured Creditors (the “Creditors’ Committee”) came before the Court. Appearances are as set forth in the record. The Joint Motion seeks approval of the Settlement Agreements and Mutual General Releases attached to the Joint Motion (the “Settlements”) between the Trustee

1 and the Creditors' Committee, on one hand, and sixty former partners of Howrey, on the other.
2 This order governs each of the sixty separate Settlements entered into between the parties.

3 The only objectors to the Joint Motion were Advanced Discovery, LLC, Howrey Claims,
4 LLC, Kent Daniels and Associates, Inc., and L.A. Best Photocopies, Inc., all of whom were
5 represented by William McGrane of McGrane LLP (collectively, the "Advanced Creditors") at
6 the hearing. Other than the Advanced Creditors, no other party objected to the Joint Motion
7 either before or at the June 24, 2014 hearing.

8 At the June 24, 2014 hearing, after the Court indicated it would grant the Joint Motion,
9 the Advanced Creditors, through their counsel, indicated their intent to appeal the ruling and
10 made an oral motion for stay of the Court's ruling pending the appeal pursuant to Rule 8005 of
11 the Federal Rules of Bankruptcy Procedure.

12 Having considered the Joint Motion, all briefing and evidence related to the Joint Motion,
13 the objections of the Advanced Creditors, the arguments of counsel, the oral motion for stay and
14 the record in this Case and, after due deliberation:

15 **THE COURT HEREBY FINDS AND DETERMINES:¹**

16 A. The Court has jurisdiction over the Joint Motion pursuant to 28 U.S.C. §§ 157 and
17 1334. This matter is a core proceeding in which the Court can enter a final order pursuant to 28
18 U.S.C. § 157(b)(2). Venue of this bankruptcy case and the Joint Motion in this District is proper
19 under 28 U.S.C. §§ 1408 and 1409.

20 B. Due and adequate notice of the Joint Motion, the hearing on the Joint Motion, and
21 the Settlements, has been provided to all parties in interest, and no other or further notice is
22

23
24 ¹ The findings and conclusions set forth herein and on the record at the hearing constitute the
25 Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made
26 applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent there is a
conflict between the Court's oral ruling at the hearing and this written order, this written
order shall control.

1 necessary. A reasonable opportunity to object or be heard with respect to the Joint Motion and
2 the relief set forth below has been afforded to all interested persons and entities.

3 C. The proposed Settlements accomplish a sound business purpose, are fair,
4 reasonable, and equitable, and satisfy the requirements of Bankruptcy Rule 9019(a) and the
5 factors outlined in *Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377 (9th Cir. 1986), as set
6 forth on the record and at the hearing.

7 D. The Trustee Released Claims (as that term is defined in Section 3(a) of the
8 Settlements),² together with any claims against the Settling Partners³ that are either wholly or
9 partially based on harm to Howrey or wholly or partially based on a transfer of Howrey's assets,
10 or that are wholly or partially based on, duplicative of or derivative of any claim of the Estate
11 (collectively, the "Duplicative Claims") are property of the Estate, such that they can be sold and
12 any party other than the Trustee (or, to the extent it has been given standing by the Bankruptcy
13 Court, the Creditors' Committee) proceeding with a lawsuit on such claims would be in violation
14 of the automatic stay. *Ahcom, Ltd. v. Smeding*, 623 F.3d 1248, 1250 (9th Cir. 2010). Without
15 limiting the generality of the previous sentence, the Duplicative Claims include the complaints
16 and proposed complaints submitted to this Court by Howrey Claims, LLC. *Id*; *Shaoxing Cnty.*
17 *Huayue Imp. & Exp. v. Bhaumik*, 191 Cal. App. 4th 1189, 1197, 120 Cal. Rptr. 3d 303, 309
18 (2011).

19 E. The Settlements each constitute a sale by the Trustee and the Committee and a
20 purchase by the respective Settling Partner (as that term is defined in the relevant Settlement) of
21 the Trustee Released Claims and Duplicative Claims against such Settling Partner and, therefore,
22

23 ² As set forth in the Settlements, the Trustee Released Claims are "any right or interest of the
24 Trustee Releasing Parties [in] claims, obligations, demands, actions, causes of action, and
25 liabilities of whatever kind and nature or character and description ..., whether in law or
26 equity, whether sounding in tort, contract or other applicable law, whether known or
unknown, whether matured or unmatured, whether liquidated or unliquidated, whether fixed
or contingent, whether held directly or derivatively, and whether anticipated or unanticipated,
that have been or could be asserted against the Trustee Released Parties."

³ A list of Settling Partners is attached hereto as Exhibit A.

1 constitutes a sale of those claims under Section 363 of the Bankruptcy Code. *DiCostanzo v.*
2 *Zimmerman (In re DiCostanzo)*, 399 Fed. App'x 307, 308 (9th Cir. 2010); *Goodwin v. Mickey*
3 *Thompson Ent. Grp., Inc. (In re Mickey Thompson Ent. Grp., Inc.)*, 292 B.R. 415, 421 (B.A.P.
4 9th Cir. 2003). *Accord In re Moore*, 608 F.3d 253, 265 (5th Cir. 2010); *In re Martin*, 91 F.3d
5 389, 395 (3d Cir. 1996). The Settlements were negotiated and proposed in good faith, from
6 arms-length bargaining positions, and without collusion. Each Settling Partner is entitled to the
7 protections afforded by Bankruptcy Code section 363(m) to an entity that acquires assets from a
8 bankruptcy estate in good faith.

9 F. The Settlements were negotiated and entered into in good faith pursuant to
10 sections 877 and 877.6 of the California Code of Civil Procedure.

11 G. If this order were stayed pending appeal, as was orally requested by the Advanced
12 Creditors at the hearing, there is a material risk that the Estate would lose the benefit of the
13 Settlements, which includes the \$4,214,254 that the Settling Partners will pay under the
14 Settlements if this order is not stayed.

15 **THEREFORE, THE COURT HEREBY ORDERS:**

16 1. The Advanced Creditors' Objections to the Joint Motion are **OVERRULED**.

17 2. The Joint Motion is **GRANTED**, with the sole exception of the injunctive relief
18 requested in Paragraph 1(c) of the Settlements, which is **DENIED**.

19 3. The Settlements are **APPROVED** under Rule 9019(a) of the Federal Rules of
20 Bankruptcy Procedure and Bankruptcy Code sections 363 and 105.

21 4. Each Settling Partner is hereby granted the protections of sections 877 and 877.6
22 of the California Code of Civil Procedure and of section 363(m) of the Bankruptcy Code.

23 5. Section 362 of the Bankruptcy Code applies to the Trustee Released Claims and
24 the Duplicative Claims and the Court expressly **RESERVES** jurisdiction pursuant to 28 U.S.C. §
25 1334(e) to enforce this stay provision and over any disputes, actions, contested, matters, or other
26 proceedings brought with respect to the Settlements and this Order.

1 6. The Settlements are binding upon the Estate, the Trustee, and the Creditors'
2 Committee, including any successors to any of the foregoing, any trustee appointed if this case
3 becomes a case under chapter 7, and any representative of the estate appointed under Section
4 1123 of the Bankruptcy Code.

5 7. The Trustee and the Creditors' Committee are hereby authorized to execute and
6 consummate the Settlements and to take all actions reasonably required to implement their terms,
7 consistent with this Order. To the extent there is a conflict between this Order and the
8 Settlements, this Order shall control.

9 8. For the reasons set forth on the record at the hearing, the oral motion of the
10 Advanced Creditors to stay this Order pending appeal is **DENIED**. If it were to grant a stay of
11 this Order pending appeal, the Court would require the Advanced Creditors to post a bond of no
12 less than \$4,214,254.

13 **IT IS SO ORDERED.**

14
15 *****END OF ORDER*****
16

17 APPROVED AS TO FORM:

18 /s/ William McGrane
19 Counsel to the Advanced Creditors

20 /s/ Matthew Heyn
21 Counsel to the Settling Partners

22 /s/ Bradford Englander
23 Counsel to the Unsecured Creditors'
24 Committee

25 /s/ Andrew B. Ryan
26 Counsel to Allan B. Diamond,
Chapter 11 Trustee for Howrey LLP

EXHIBIT A

- | | | | |
|-----|----------------------|-----|--------------------|
| 1. | Alan Grimaldi | 32. | Kevin Burke |
| 2. | Bert Reiser | 33. | Korula Cherian |
| 3. | Brian Wallach | 34. | Marc Schildkraut |
| 4. | Carmine Zarlenga | 35. | Mary Craig Calkins |
| 5. | Christopher MacAvoy | 36. | Mary Moltenbrey |
| 6. | Curtis Porterfield | 37. | Matthew Moore |
| 7. | Daniel Shvodian | 38. | Matthew Wolf |
| 8. | Darren Bernhard | 39. | Melinda Patterson |
| 9. | David Dekker | 40. | Michael Cowie |
| 10. | David Stewart | 41. | Michael Jahnke |
| 11. | Dimitri Nionakis | 42. | Patricia Kammerer |
| 12. | Duane Mathiowetz | 43. | Paul Cuomo |
| 13. | Edward Han | 44. | Peter Chassman |
| 14. | Eric Schlichter | 45. | Peter Moll |
| 15. | Ezra Levine | 46. | Richard Beckler |
| 16. | Floyd Nation | 47. | Richard Ripley |
| 17. | Glenn Rhodes | 48. | Richard Stanley |
| 18. | Gregory Ballard | 49. | Robert Gooding |
| 19. | James Kress | 50. | Robert Shulman |
| 20. | James Valentine | 51. | Robert Thum |
| 21. | Jerrold Ganzfried | 52. | Robert Wales |
| 22. | Jill Berkeley | 53. | Roger Klein |
| 23. | John Heisse | 54. | Roxann Henry |
| 24. | John Keville | 55. | Scott Flick |
| 25. | John Norris | 56. | Stephen Cagle |
| 26. | John O'Neill | 57. | Stephen Weissman |
| 27. | John Taladay | 58. | Theresa Gillis |
| 28. | Jonathan Retsky | 59. | Thomas Miller |
| 29. | Joseph Lechtenberger | 60. | Walter Berger |
| 30. | Joseph Ostoyich | 61. | William Henry |
| 31. | Joseph Walker | | |